



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 15:140. Biodiesel tax credit.

5 RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.423,
6 141.424

7 STATUTORY AUTHORITY: KRS 131.130, 141.424, 141.425

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.423 establishes a nonrefundable
9 tax credit for biodiesel producers, biodiesel blenders, and renewable diesel producers. KRS

10 141.425 authorizes the department to promulgate administrative regulations necessary to
11 administer the biodiesel tax credit. KRS 141.424 requires the department to promulgate an
12 administrative regulation to establish the manner in which a pass-through entity shall electronically
13 notify the department of who may claim the approved tax credit.

14 Section 1. Definitions. (1) "Applicant" means a biodiesel producer, biodiesel blender, or re-
15 newable diesel producer that files a tax credit claim as provided by KRS 141.423.

16 (2) "Application" or "Schedule BIO" means the Schedule BIO, Application and Credit
17 Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A720BIO)[-
18 ~~Incorporated by reference in 103 KAR 3:040,~~] that is used to make a tax credit claim with the
19 department for gallons of biodiesel produced in this state, gallons of biodiesel used in blended
20 biodiesel produced in this state, or gallons of renewable diesel produced in this state as provided
21 by KRS 141.423(4).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Biodiesel" is defined by KRS 141.422(4).

(5) "Biodiesel blender" means an entity that blends biodiesel with petroleum diesel as provided by KRS 141.422(8).

(6) "Biodiesel producer" is defined by KRS 141.422(5).

(7) "Blended biodiesel" is defined by KRS 141.422(8).

(8) "Corporation" is defined by KRS 141.010(4).~~[141.010(24).]~~

(9) "Department" is defined by KRS 141.010(5).~~[141.010(2).]~~

(10) "Identification number" means the:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

~~(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.~~

(11) "Individual" is defined by KRS 141.010(13).~~[141.010(7).]~~

(12) "Limited liability pass-through entity" is defined by KRS 141.010(15).~~[141.010(28).]~~

(13) "Pass-through entity" is defined by KRS 141.010(21).~~[141.010(26).]~~

(14) "Renewable diesel" is defined by KRS 141.422(12).

(15) "Renewable diesel producer" is defined by KRS 141.422(13).

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification. (1) A biodiesel producer or biodiesel blender shall provide proof the biodiesel gallons reported on the application meet ASTM standard specification D6751 for biodiesel fuel (B100) blend stock distillate fuels.

1 (2) A renewable diesel producer shall provide proof that the renewable diesel gallons re-reported
2 on the application meet ASTM standard specification D396 for fuel oils intended for use in various
3 types of fuel-oil-burning equipment, D975 for diesel fuel oils suitable for various types of diesel
4 fuel engines, or D1655 for aviation fuels.

5 (3) Proof submitted by a biodiesel producer or a renewable diesel producer shall be in the form
6 of documentation of laboratory results that certify that the biodiesel or renewable diesel reported
7 on the Schedule BIO meets the ASTM standard specification.

8 (4) A biodiesel blender shall obtain from the biodiesel producer a copy of laboratory results
9 that certify that the biodiesel reported on the Schedule BIO meets the ASTM standard specification.

10 (5) An independent ASTM certified laboratory shall be used to generate the laboratory results
11 that are required by this section.

12 (6) Failure to submit documented laboratory results that certify that the biodiesel, renewable
13 diesel, or the biodiesel used in the blended biodiesel meets the ASTM standard specification with
14 the Schedule BIO shall result in the department disallowing the credit.

15 (7)(a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall have the
16 biodiesel, blended biodiesel, or renewable diesel tested as provided by subsection (4) of this
17 section on July 1 and December 31 of each calendar year to determine if the biodiesel, blended
18 biodiesel, or renewable diesel meets the ASTM standard specification.

19 (b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be
20 attached to the Schedule BIO submitted to the department as provided by Section 2 of this
21 administrative regulation.

22 (c) Failure to provide proof of meeting the ASTM standard specification on July 1 and
23 December 31 of each calendar year with the application shall result in the denial of the credit

1 claimed for gallons of biodiesel or renewable diesel back to the previous testing date of July 1 or
2 December 31.

3 (d) If proof is timely submitted and the proof certifies that the biodiesel or renewable diesel
4 does not meet the ASTM standard specification, then all credit claimed for gallons of biodiesel,
5 renewable diesel, or biodiesel used in the blended biodiesel back to the previous testing date of
6 July 1 or December 31 shall be disallowed.

7 Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit
8 certificate issued by the department to its tax return on which the tax credit is claimed.

9 (2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule
10 K-1, Form 720S, Form number 41A720S(K-1), Form 765, Form number 41A765(K-1), or Form
11 765GP, Form number 42A765GP(K-1)[~~incorporated by reference in 103 KAR 3:040,~~] to the
12 partner's, member's, or shareholder's tax return on which the credit is claimed.

13 Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity claiming
14 the biodiesel tax credit shall file a report with the department by electronic mail at
15 KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

16 (2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII
17 format that includes each partner's, member's or shareholder's:

18 (a) Name;

19 (b) Address;

20 (c) Telephone number;

21 (d) Identification number; and

22 (e) Distributive share of the tax credit.

103 KAR 15:140

APPROVED:

Daniel Bork
DANIEL BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

August 14, 2018
DATE APPROVED BY AGENCY

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 15:140

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation removes an outdated reference to the department Income Tax Forms Manual, 103 KAR 3:040, which was repealed in 2017; and updates statutory references to conform to recent changes in HB 487 of the 2018 GA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:140 to remove incorrect and/or outdated information which may deem this regulation deficient under KRS Chapter 13A without removal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.425 requires the department to promulgate a regulation to establish the manner in which a biodiesel producer or blender shall notify the department of the credit claimed for gallons of biodiesel fuel produced in this state. This administrative regulation provides the most recent up to date information needed to comply with KRS 141.425.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers and blenders of biodiesel fuel in Kentucky will benefit from the updated information contained in this regulation for reporting.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. This amendment only removes an outdated reference to a repealed regulation and updates statutory references.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with these updates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the most recent and up to date information they may need.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no new costs associated with this amendment. Currently department funding will cover any expenses associated with implementing this administrative regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Currently budgeted department funding and staff.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all producers of biodiesel fuel in Kentucky are required to follow the same process to report gallons produced in the state to the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 15:140

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.424 and 141.425.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state and local government agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: